IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
C.W.P. No. 19482 of 2006
DATE OF DECISION: 8.12.2006
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The Executive Engineer, Provincial Division, PWD, B&R, Bhiwani

..PETITIONER

VS.

Umed Singh and others.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. D.S. Nalwa, Addl. A.G. Haryana
for the petitioner.
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ARVIND KUMAR, J.

Through the instant petition, the petitioner-department has laid challenge to the award made way back on 20.8.2003 by respondent No.2. By virtue of the impugned award, the Labour Court ordered re-instatement of respondent No.1 on the post held by him with its continuity and 50% back wages.

We have heard learned Additional Advocate General at length and have also gone through the paper book as also the impugned award.

It is evident from record that through the instant petition, the petitioner has questioned the legality of the award made way back on August 20,2003 after a lapse of more than 3 years, that too without any explanation much less convincing one. In absence thereof, the petitioner cannot and should not be permitted to challenge the impugned award after a lapse of more than 3 years, as per its own whims and wishes. The Hon'ble Supreme Court in the case of **Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271** has clearly held that an aggrieved party has to move the Court within a period of six months or at best within one year of the date when cause of action accrued. The Supreme Court has observed as follows:-

> "It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it

> that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Articles 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

Sadasivaswamy's case (supra) has been followed by this Court in the case of **Harvinder Singh vs. State of Punjab & Ors. 2005 (2) SLR 587**.

Apart from the question of delay, it is the case of the petitioner itself that the services of the workman were discontinued w.e.f. 1.5.1999 and from the details of working shown in Annexure P-2 i.e. the reply filed by the petitioner to the claim statement as well as in the award of the Labour Court, it is elicited out that the total days of service rendered by the workman in twelve months preceding the date of his termination, comes to more than 240 days. Admittedly, there was non-compliance of provisions of Section 25-F of the Industrial Disputes Act, 1947 Act (for short the Act), which are couched in mandatory form and non-compliance therewith has the result of rendering the order of retrenchment ab initio and non est. Thus, the Labour Court has rightly set aside the termination of the workman being made in violation of provisions of the Act. The impugned award is just and reasoned one. No flaw could be found therein.

For the discussion made above, we dismiss the instant petition in limine accordingly.

However, before parting we consider it appropriate to express our views. It has been noticed that in most of the petitions filed by the State

of Haryana challenging the awards made by the Labour Court in favour of the workman, the concerned departments prefer to remain ex parte or the petitions challenging the awards are being filed with inordinate delay, without there being any explanation. The petitions with such an inordinate delay are filed only to have a seal of the Court and thus the powers of Court are used and abused. It is, thus sorry state of affairs that despite the departments well equipped with records and public servants of various grades and scales, the cases are contested with a callous approach. These are the serious matters. The said conduct of errant officers must be deprecated. It is hoped that the State Government will examine it with a pragmatic approach and would take appropriate disciplinary measures against the defaulting officers. .

In these circumstances, we request the Chief Secretary, Government of Haryana to look into the matter and take up the matter with the concerned departments so that such kind of acts/ lapses are not committed by the departments

(ARVIND KUMAR)
JUDGE

December 8,2006 **(J.S. NARANG)**
Jiten **JUDGE**